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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASON KINZER, an individual,

Plaintiff,

v.

ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT
TRAVEL CO. a Nevada corporation,

Defendants.

Case No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446, Defendants Allegiant Air, LLC and Allegiant Travel Co.¹ (“Defendants”) remove the action captioned as *Jason Kinzer v. Allegiant Air, LLC et al.*, Case No. A-15-727524-C, which was filed in the Eighth Judicial District Court in Clark County, Nevada, to the United States District Court for the District of Nevada. Defendants support the removal as follows:

1. On November 10, 2015, Plaintiff Jason Kinzer (“Plaintiff”) commenced an action against Defendants in the Eighth Judicial District Court for Clark County, Nevada. Copies of the Summons and Complaint are attached as **Exhibit 1**.

¹ Allegiant Travel Co. was not Plaintiff’s employer and avers that it is not a proper party to this action.

2. Defendants remove this action to the United States District Court for the District of Nevada pursuant to 28 U.S.C. §§ 1331 and 1441(a). This action is a civil action over which the Court has original jurisdiction under 28 U.S.C. §§ 1331 and is one which may be removed to the Court pursuant to the provisions of 28 U.S.C. § 1441.

3. Plaintiff's Complaint presents substantial questions of federal law, thereby invoking the Court's original jurisdiction over actions presenting federal questions. Specifically, The Complaint contains claims that arise under the laws of the United States. Plaintiff, for example, alleges claims based on purported violations of the Federal Aviation Act (49 U.S.C. § 447), its implementing regulations (Title 14 of the Code of Federal Regulations), the FAA as amended in the Airline Deregulation Act (49 U.S.C. § 41713), and the Wendell H. Ford Aviation Investment Act of the 21st Century (49 U.S.C. § 42121(a)).

4. Further, the Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. Defendants are citizens of Nevada, Plaintiff is a citizen of Florida, and the amount in controversy exceeds \$75,000.00.² See 28 U.S.C. § 1332.

5. To the extent Plaintiff has stated other claims arising under state law, such claims are properly before the Court based on the Court's supplemental jurisdiction. 28 U.S.C. §§ 1367 and 1441(a).

6. Venue in the United States District Court for the District of Nevada is proper under 28 U.S.C. §§ 1391 and 1441(a).

7. This Notice of Removal has been filed within thirty days of Defendants' receipt of the Summons and Complaint, and is therefore timely under 28 U.S.C. § 1446(b).

² Prior to serving the Summons and Complaint on Defendants, Plaintiff demanded \$3,000,000.00 to resolve this dispute. See Declaration of Laura Overton, attached as **Exhibit 2**. In addition, Plaintiff received a salary of \$120,000.00 per year at the time of his termination. *Id.* ¶ 3. Further, in his Complaint, Plaintiff seeks damages for "loss of income, humiliation, embarrassment, loss of reputation as a pilot, loss of his ability to find similar employment as a pilot or employee in the aviation industry, and probably in other fields of employment as well." **Exhibit 1**, Complaint ¶ 33. Under such circumstances, the damages threshold for diversity jurisdiction is easily satisfied.

9. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will also be filed with Nevada's Eighth Judicial District Court for Clark County.

JACKSON LEWIS P.C.

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 7th day of October, 2015, I caused to be served via the Court's CM/ECF Filing, a true and correct copy of the above foregoing **NOTICE OF REMOVAL** properly addressed to the following:

Michael A. Urban
Sean W. McDonald
THE URBAN LAW FIRM
4270 S. Decatur Blvd., Ste. A-9
Las Vegas, Nevada 89103

Attorneys for Plaintiff

/s/ Emily Santiago
Employee of Jackson Lewis P.C.

EXHIBIT 1

EXHIBIT 1

SUMM

MICHAEL J. PANGIA, ESQ.

D.C. Bar No. 967182

(*Pro hac vice* admission pending under SCR 42)

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Counsel for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JASON KINZER, an individual;

Plaintiff,

vs.

ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT TRAVEL
CO. a Nevada corporation,

Defendants.

Case No.: A-15-727524-C

Dept. No.: XV

SUMMONS—CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE
INFORMATION BELOW.**

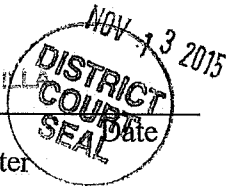
TO THE DEFENDANTS(S): A civil Complaint has been filed by the Plaintiff against you for relief
set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you,
exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
 - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

CLERK OF THE COURT

By: WALTER ABREGO-BONILLA
Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155



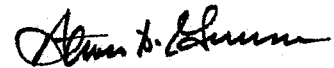
Submitted by:

THE URBAN LAW FIRM

Sean W. McDonald

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CLERK OF THE COURT

DMJT
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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

JASON KINZER, an individual;

Plaintiff,

vs.

ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT TRAVEL
CO. a Nevada corporation,

Defendants.

Case No.: A-15-727524-C

Dept. No.: XV

DEMAND FOR JURY TRIAL

TO: THE CLERK OF THE ABOVE-ENTITLED COURT; and
TO: THE ABOVE LISTED DEFENDANTS

The Plaintiff hereby demands that a trial of the above-entitled action be heard before a jury.

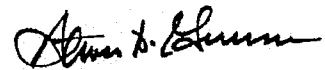
Dated this 13th day of November, 2015.

THE URBAN LAW FIRM

By: 

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CLERK OF THE COURT

1 COMP
2 MICHAEL J. PANGIA, ESQ.
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20 *Counsel for Plaintiff*

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 JASON KINZER, an individual;
24 Plaintiff,

Case No.: A-15-727524-C

Dept. No.: XV

25 vs.

VERIFIED COMPLAINT

26 ALLEGIANT AIR, LLC, a Nevada limited
27 liability company; and ALLEGIANT TRAVEL
28 CO. a Nevada corporation,

Defendants.

Serve:

Scott Sheldon,
Registered Agent
1201 N Town Center Drive
Las Vegas, NV 89144

29 Comes now, James Kinzer, by and through undersigned counsel, and brings this action
30 against the defendants, Allegiant Air LLC, an operating subdivision of Allegiant Travel Co.
31 (hereinafter collectively as "defendant," "Allegiant Air," or "Allegiant"), and alleges as follows:

1 **I. THE PARTIES**

2 1. The plaintiff, Jason Kinzer (hereinafter "Captain Kinzer"), is a citizen and
3 resident of the State of Florida, and at all times relevant was hired and trained by the defendant,
4 Allegiant Air, in the State of Nevada to act as pilot in command of its aircraft.

5 2. Defendant, Allegiant Air, LLC, is a limited liability company organized and
6 existing under the laws of the State of Nevada. Defendant Allegiant Travel Co. is the parent
7 company of Allegiant Air, LLC, is a corporation organized and existing pursuant to the laws of
8 the State of Nevada. Both defendants have its principal place of business located in Clark
9 County, Nevada, and this court has jurisdiction over the subject matter and parties thereto.

10 **II. GENERAL ALLEGATIONS**

11 3. At all times relevant, Allegiant Air is a common carrier by air of passengers for
12 hire and holds itself out to the general public as a provider of air transportation to and from cities
13 in the United States, including Las Vegas, Nevada and St. Petersburg, Florida.

14 4. At all times relevant, Allegiant Air holds a certificate for which it applied for and
15 was issued by the Federal Aviation Administration (hereinafter FAA) for the carriage of
16 passengers by air in accordance with the regulations mandated by 14 Code of Federal
17 Regulations, Part 121 (hereinafter Part 121) and was obligated to operate its aircraft in the
18 carriage of passengers for hire in accordance with said regulations and a high degree of care with
19 which it is charged as a common carrier.

20 5. At all times relevant, the defendant, Allegiant Air, is by regulation obligated to
21 conduct operations in accordance with the Operation Specifications for which it sought and was
22 approved by the FAA, as required by Part 121.

23 6. The Federal Aviation Regulations with which Allegiant Air was to comply as well
24 as its obligation as a common carrier for hire required its operations to be conducted with a high
25 degree of care.

26 7. At all times relevant, the defendant, Allegiant Air leased and operated a
27 McDonnell Douglas model MD-80 aircraft, registration No. N869GA (hereinafter "subject
28

1 aircraft”), and was using it for the carriage of passengers for hire and was required to comply
2 with said Part 121 in the operation of subject aircraft.

3 8. At all times relevant, the plaintiff held a valid Airline Transport Certificate issued
4 by the FAA with appropriate rating that allowed him to act as pilot in command of the subject
5 aircraft, and he was entrusted by the defendant to act as pilot in command of the subject aircraft.

6 9. On June 8, 2015, the defendant, Allegiant Air, assigned or designated the plaintiff
7 to act as pilot in command of the subject aircraft in order to carry fare paying passengers from St.
8 Petersburg, Florida to Hagerstown, Maryland on a flight designated as Flight No. 864.

9 10. The defendant, Allegiant Air, in so assigning the plaintiff the position of pilot in
10 command of the subject flight, was obligated to make all reasonable assurances as mandated by
11 Part 121 to determine that the plaintiff, Captain Kinzer, was fully qualified and trained as
12 required under Part 121 and its FAA-approved Operations Specifications and expected Captain
13 Kinzer to carry out his responsibilities both under Part 121 and the applicable General Operating
14 and Flight Rules contained in 14 Code of Federal Regulations, Part 91.

15 11. The General Operating and Flight Rules, particularly 14 Code of Federal
16 Regulations, Part 91.3, at all times relevant, mandated Captain Kinzer and the defendant,
17 Allegiant Air, that he was to be directly responsible for, and the final authority as to, the
18 operation of the subject aircraft on said Flight No. 864.

19 12. At all times relevant, the defendant, Allegiant Air, was responsible and obligated
20 under the Federal Aviation Regulations, particularly 14 C.F.R. § 121.533(d), to assure that its
21 pilots in command, including the plaintiff on Flight No. 864, remain responsible for the safety of
22 the passengers, crewmembers and the airplane.

23 13. At all times relevant, the defendant, Allegiant Air, was obligated and required to
24 assure that the operation of its aircraft, including the subject aircraft, was done in accordance
25 with the FAA-approved General Operation Manual and in the manner in which it periodically
26 trained its pilots in the simulator and in addition to its duty to exercise a high degree of care, all
27 of which mandated the evacuation of an aircraft in the event of a fire or possibility of a fire or
28 any condition that might possibly affect the health and safety of the passengers and crew.

1 14. At all times relevant, the defendant, Allegiant Air, was obligated and responsible
2 to comply with the Federal Aviation Regulations, particularly 14 C.F.R. § 121.557(a), to assure
3 that in emergency situations arising during flight that require immediate decision action, that the
4 pilot in command, including the plaintiff, Captain Kinzer, may take any action that he considers
5 necessary under the circumstances and may deviate from prescribed operation procedures to the
6 extent required in the interest of the safety of his passengers and crew as well as the aircraft.

7 15. The Federal Aviation Regulations have the force and effect of law and, at no
8 times relevant, did Allegiant Air apply for or receive a waiver or exemption from the regulations
9 pertaining to the authority and responsibility of the pilot in command of its aircraft.

10 16. On June 8, 2015, at about 4:30 p.m. EDT (or 2030 Zulu), the subject aircraft
11 operated by the defendant, Allegiant Air, as Flight No. 864 took off from St. Petersburg, Florida
12 bound for Hagerstown, Maryland with Captain Kinzer assigned by the defendant as the pilot in
13 command, along with a first officer, four cabin crewmembers and one hundred and forty-one
14 (141) fare paying passengers on board.

15 17. Shortly after takeoff, as the said flight was climbing to its Air Traffic Control
16 assigned altitude and before it reached five thousand feet, one or more of the cabin crew reported
17 to Captain Kinzer and the first officer that acrid smoke or chemical fumes from an undetectable
18 source was emanating from the rear of the passenger cabin and that it was being detected and
19 inhaled by the passengers as well.

20 18. Captain Kinzer, in accordance with his regulatory duty and his common law
21 obligation to provide a high degree of care for the safety of his passengers, declared an
22 emergency to Air Traffic Control and returned for a landing to the St. Petersburg airport, which
23 was still the closest useable airport to his position.

24 19. After landing and clearing the active runway, Captain Kinzer advised the air
25 traffic ground controller that Flight 864 was going to stop where they were and, having been met
26 at that location by the vehicles and personnel of the St Petersburg Airport Crash/Fire Rescue,
27 (hereinafter "Fire Rescue"), in order to have the Fire Rescue personnel check out the aircraft
28 before proceeding to the terminal. The air traffic ground controller asked the Fire Rescue

1 personnel if they copied Flight 864, to which they answered in the affirmative. The Fire Rescue
2 personnel asked Flight 864, "...what do you need us to check out?" to which the cockpit crew
3 responded that the flight attendants reported to them a "burning smell" immediately after they
4 departed and asked Fire Rescue if they could see any smoke or scorching. After further
5 checking, Fire Rescue reported to Captain Kinzer and his First Officer, "I'm showing some
6 smoke on your No. 1 engine" and urged the crew to shut it down.

7 20. Captain Kinzer and his First Officer shut down the engines and the First Officer
8 proceeded to discharge the on board engine fire extinguisher into the engine

9 21. Captain Kinzer and the First Officer checked with the cabin crew to learn that the
10 acrid burning smell was not resolved and, for the safety of his passengers and crew and in
11 accordance with his training and responsibility, ordered the cabin crew to prepare for an
12 evacuation and notified the air traffic ground controller of that intention.

13 22. After Flight 864 reported to the air traffic ground controller of the decision to
14 evacuate, a person who did not identify himself or his authority, over the air traffic control
15 frequency, commanded the cockpit crew to "hold off on your evacuation." The air traffic
16 controller admonished the persons on the frequency that they must identify themselves when
17 using the air traffic control frequency to which there was no response. Captain Kinzer requested
18 an identification of the person making this command to which a response from the unidentified
19 person was a repeat of the command, "I'm telling you not to evacuate yet," without giving the
20 source of authority or reason to make such a command.

21 23. After approximately another minute passed, Captain Kinzer asked the unidentified
22 person for the reason why evacuation was being held off and that "We need an answer, please."
23 The air traffic ground controller asked Fire Rescue, "Did you copy that?" to which no one
24 responded. The air traffic ground controller interceded and repeated the request to the unknown
25 caller that Flight 864 needed to know why evacuation was to be delayed to which no identifiable
26 response, reason or authority was given. A true and correct copy of the pertinent
27 communications over the Air Traffic Ground Control frequency is annexed hereto and made a
28 part hereof as **Exhibit 1**.

1 24. In compliance with the Federal Aviation Regulations, particularly 14 C.F.R. §
2 121.417(4), Allegiant Air was obligated in the training of its pilots to review and discuss
3 previous aircraft accidents and incidents pertaining to actual emergency situations. Among those
4 situations reviewed were instances where a delay in landing or evacuation, particularly in the
5 presence of smoke, caused serious injury and death.

6 25. The unauthorized command over the air traffic control frequency, given without
7 adequate identification, citation of authority or reason, attempting to usurp the legal final
8 command responsibility of Captain Kinzer, particularly after an emergency landing due to smoke
9 in the passenger cabin from an unknown source and report of smoke coming out of one of the
10 engines, caused additional alarm on the part of Captain Kinzer for the safety of his passengers
11 and crew and, with the concurrence of his First Officer, ordered an evacuation in accordance
12 with the duty and responsibility imposed upon him by law, his training and the high degree of
13 care with which he was charged.

14 26. While personally checking the passenger cabin to assure himself that the
15 passengers were safely evacuated, Captain Kinzer noted that a passenger was still on board
16 saying, "Help me, I cannot walk." He was a paraplegic. Captain Kinzer lifted the disabled
17 passenger out of his seat, and with the assistance of one of the flight attendants, carried the
18 passenger to the exit where he could be safely evacuated. Captain Kinzer then rechecked the
19 cabin to ensure personally that all souls were evacuated before he left the plane himself.

20 27. Because Captain Kinzer ordered the said evacuation, Allegiant Air corporate
21 management accused him of not taking into primary account "the Company's assets, ground
22 equipment, fuel and the personal time of our employees and customers" above his command
23 responsibility of caring for the safety of his passengers and crew—essentially not placing
24 company profits above safety—and, for that reason, fired him. Attached hereto and incorporated
25 by reference as **Exhibit 2** is a true copy of the Allegiant Air termination letter.

26 28. At all times relevant, Captain Kinzer has had a perfectly clean record with no
27 violations, sanctions, warnings or reprimands of any kind, and was determined to be rated and
28

1 certificated by the Federal Aviation Administration and competent to act as pilot in command of
2 large aircraft carrying passengers and cargo for hire.

3 **FIRST CAUSE OF ACTION**

4 **FOR WRONGFUL AND TORTIOUS TERMINATION OF EMPLOYMENT**

5 29. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each and every
6 of the above allegations as though fully set forth herein.

7 30. Allegiant Air wrongfully and maliciously fired Captain Kinzer for not placing
8 monetary concern such as company assets, cost of rescheduling, fuel and cost of company
9 personnel in his decision, above his command responsibility for the safety of his passengers and
10 crew as required by law the high degree of due care he and the company was supposed to
11 maintain.

12 31. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer are
13 retaliatory in that it essentially demanded of the plaintiff, and others similarly situated, to
14 participate in an activity, policy and/or practice of his employer which violate the Federal
15 Aviation Regulations and potentially endanger the lives and limbs of his passengers and the
16 general public.

17 32. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer is
18 deleterious and contrary to and amounts to a reckless disregard of the public policy of all states,
19 including the State of Nevada, particularly by reason of the application of the Federal Aviation
20 Regulations that establish a uniform public policy to be recognized by all states concerning
21 operation of aircraft, unauthorized use of air traffic control frequencies and air transportation of
22 fare paying passengers.

23 33. As a direct and proximate cause of the wrongful and tortious conduct on the part
24 of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other
25 things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot,
26 loss of his ability to find similar employment as a pilot or employee in the aviation industry, and
27 probably in other fields of employment as well, and has been damaged in an amount in excess of
28 TEN THOUSAND DOLLARS (\$10,000.00), exclusive of interest and costs.

SECOND CAUSE OF ACTION
FOR DEFAMATION

34. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the above allegations as though fully set forth herein.

35. The discharge letter (Exhibit 2), signed by Mark Grock, Allegiant's Chief Pilot, as well as other writings and emails created by Allegiant, contain false and defamatory statements concerning Captain Kinzer.

36. By providing a copy of the discharge letter to Greg Baden, who was not privileged to receive the same, as well as retaining a copy in Captain Kinzer's personnel file and by not controlling access to this file to exclusively those who had a legitimate management reason to review the file, there was unprivileged publications to third parties. In addition to the discharge letter, Allegiant Air management, agents and employees have made other unprivileged publication to third parties of false and defamatory statements concerning Captain Kinzer.

37. The publication to Mr. Baden and to Captain Kinzer's file, as well as to others, was at least negligent and may have in fact been an intentional attempt to send a message to other Allegiant pilots concerning an unlawful company protocol on smoke in the cabin by Allegiant management.

38. As a result of the publication to Captain Kinzer's personnel file, as well as the comments made to others, Captain Kinzer has been blackballed by the aviation industry and is unable to find employment in the aviation field and difficulty in finding employment, aside from possibly self-employment, in other areas as well.

39. As a direct and proximate cause of the wrongful and tortious conduct on the part of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot, loss of his ability to find similar employment as a pilot or employee in the aviation industry, and probably in other fields of employment as well, and has been damaged in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00), exclusive of interest and costs.

THIRD CAUSE OF ACTION

FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

40. The plaintiff, Captain Kinzer, repeats Plaintiffs reallege and reaver the foregoing paragraphs as if fully rewritten here.

41. At all times relevant, defendant, Allegiant Air, engaged in extreme and outrageous conduct in the following ways, including but not limited to:

a. Taking advantage of the position of trust and confidence given to it by the FAA and placing its own financial own financial benefit above that of fare paying passengers;

b. Failing to abide by FAA Rules and Regulations and permitting Captain Kinzer to operate its aircraft in the best interest of his passengers; and

c. Attempting to send a warning message to the line pilots of Allegiant Air by firing Captain Kinzer without cause or indeed any legal justification.

42. At all times relevant, Defendant Allegiant Air's conduct was recklessly indifferent to the likelihood that its actions would cause severe emotional distress to the Plaintiff, and caused and will continue to cause severe emotional distress to the Plaintiff.

FOURTH CAUSE OF ACTION

FOR PUNITIVE OR EXEMPLARY DAMAGES

43. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the above allegations as though fully set forth herein.

44. The acts and omissions on the part of the defendant, Allegiant Air, towards Captain Kinzer were not only malicious, retaliatory and in a reckless disregard of his rights and responsibilities, but also a reckless disregard of the Federal Aviation Regulations and the high degree of a duty of due care with which it is charged for the safety of the public. Moreover, it sends a dangerous warning message to other Allegiant Air pilots to place corporate financial concerns and profits as a priority over the safety of the passengers, crew and the general public in times of emergency or else jeopardize their continued employment with this defendant.

1 45. In the interest of safety and welfare of the public, both flying and on the ground,
2 plaintiff demands that punitive damages be awarded in order to deter future similar conduct on
3 the part of this defendant and others similarly situated in an amount to be determined by the jury
4 as appropriate under the law of the State of Nevada.

5 WHEREFORE, plaintiff demands judgment against the defendant in an amount in excess
6 of TEN THOUSAND DOLLARS (\$10,000.00), to be determined by the jury, to compensate him
7 for compensatory losses stated above and for punitive damages, together with appropriate
8 interest and costs and for such other and further relief this Honorable Court may deem just and
9 proper.

10 Dated this 10th day of November, 2015.

11 MICHAEL J. PANGIA, ESQ.
12 D.C. Bar No. 967182
13 (Pro hac vice admission pending under SCR 42)
14 **THE PANGIA LAW GROUP**
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20 **THE URBAN LAW FIRM**

21 By:

22 
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Counsel for Plaintiff

Exhibit “1”

FEDERAL AVIATION ADMINISTRATION

RE: ACCIDENT PIE/ATCT 0024

PIE/ATCT 0024
38:00 to 45:00

THE FOLLOWING WAS TRANSCRIBED:
FEDERAL AVIATION ADMINISTRATION
ST. PETE/CLEARWATER AIR TRAFFIC CONTROL TOWER

06-08-15
2138:00 to 2145:00

No Court Reporter Present

CP REPORTING, LLC
20006 North Cove Road, Suite 100
Cornelius, NC 28031

(704) 682-0747

PIE/ATCT 0024

INDEX

Radio transmissions in order of speakers:

864 - Allegiant Flight 864

GC - Ground Control

RF - Rescue and Fire (unable to determine which unit)

RF2 - Rescue and Fire Unit 2

1417Y - Cessna 1417Y

RF3 - Rescue and Fire Unit 3

N728RH - Beech 728 RH

Abbreviations:

FLIR - Forward Looking Infrared

Page 3

1 (2138:00)

2 2138:26 864 Ground Allegiant 864 clearing
3 on alpha

4 2138:28 GC This is 864 Ground say
5 intention

6 2138:32 GC Yeah we're going to stop once
7 we clear the runway and have
8 the emergency equipment just
9 check us out

10 2138:38 GC This is 864 roger if you just
11 want to round the corner then
12 and stopped there

13 2138:44 GC Okay uh we're actually going
14 to stop right here and have
15 them just check us out if you
16 could

17 2138:49 GC Allegiant 864 roger we'll do
18 and the emergency vehicle did
19 you copy that

20 2138:54 RF Yeah, we copy

21 2138:55 864 Roger

22 2139:10 GC And emergency vehicles can you
23 advise you're not clear 36
24 right then correct

25 2139:20 RF We're not clear 36 right

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1 2139:22 GC Okay let me know let me know
2 as soon as you're clear runway
3 36 right please
4 2139:35 1417 Good afternoon Ground Cessna
5 1417 Yankee any idea for
6 landing
7 2139:39 GC Number 1417 Yankee (inaudible)
8 2139:42 1417 Yes sir with the activity I
9 hear are we going to be able
10 to take off this afternoon or
11 everything going to be closed
12 for a while?
13 2139:47 GC 1417 Yankee and you may want
14 to depart runway 4
15 2139:54 1417 Okay we'll go ahead and fire
16 up and call you back thanks
17 2140:00 GC 17 Yankee roger
18 2140:02 RF2 St. Pete Ground, ARFF2
19 2140:03 GC RF 2 semi ground
20 2140:05 RF2 Can I talk to the pilot on
21 this channel or do you want me
22 to move to the discreet
23 channel
24 2140:11 GC RF 2 and you can go ahead for
25 right now if it becomes

1 lengthy I'll let you know
2 2140:16 RF2 Copy RF 2 Allegiant Aircraft
3 what do you need us to check
4 out
5 2140:24 864 All right the flight
6 attendants reported a burning
7 smell immediately after
8 departure so do you guys have
9 a way of checking to see
10 anything out of the ordinary
11 in the airplane do you see
12 smoke do you see any scorching
13 2140:35 Unknown Yeah there's fire
14 2140:37 GC Yeah we don't have any any
15 signs of that I'll swing
16 around your other side there,
17 starboard side and we'll do a
18 FLIR check on that side as
19 well
20 2140:47 864 Okay thanks very much we'll be
21 standing by this frequency so
22 if you give us a clear we'll
23 taxi back to the gate
24 afterward
25 And is it better for you guys

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1 if we clean the airplane's
2 configuration or do you -- is
3 the flare better with the flap
4 or the flaps (inaudible)
5 deployed like this
6 2041:05 RF I'm -- I'm showing some smoke
7 on your number one engine
8 2041:14 864 Verify you're showing smoke on
9 the number one engine
10 2041:16 RF That's affirmative -- if you
11 want to shut number one down
12 that's the pilot side
13 2041:21 864 All right number one here we
14 go
15 2041:53 864 Tower Ground Allegiant 864
16 we're going to be evacuating
17 2041:58 GC Allegiant 864 roger okay and
18 at that -- at that position
19 correct
20 2042:03 864 Yes right here we're going to
21 be evacuating
22 2042:05 RF 864 roger
23 2042:07 Unknown 864 hold off on your
24 evacuation please
25 2042:13 864 Who said to hold off

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1 2042:15 Unknown Yes please hold off on your
2 evacuation
3 2042:16 864 Yes who is this
4 2042:22 GC Be advised when you guys are
5 making transmissions identify
6 yourself first so everybody
7 knows who's talking to who
8 2042:29 864 Yeah Allegiant 864 who's
9 telling us not to evacuate
10 2042:34 Unknown Airport Command RF 2 I'm
11 telling you not to evacuate
12 yet
13 2042:37 864 All right
14 2043:01 864 Allegiant 864 why do you want
15 us to hold
16 2043:17 864 We need answer please why do
17 you want us to hold on the
18 evacuation
19 2043:27 GC RF 2 Command safety ground did
20 you copy Allegiant's
21 transmission
22 2043:36 GC Ops 1 are you on St. Pete
23 ground
24 2043:44 GC Okay are there any emergency
25 vehicles any of the RF

Page 8

1 vehicles on ground frequency
2 2043:51 RF3 Affirmative RF 3 on
3 2043:53 GC Okay RF 3 on Allegiant 864 is
4 requesting why do you want
5 them to hold on the evacuation
6 they need an answer please
7 2044:04 RF RF 3 give me one second I'll
8 contact the man on the ground
9 2044:16 N728RH St. Pete Ground November 728
10 Romeo go
11 2044:45 Unknown (inaudible)
12 2044:46 N728RH St. Pete Ground November 728
13 Romeo Hotel
14 2044:50 GC Number 728 Romeo Hotel, St.
15 Pete Ground
16 2044:53 N728RH How much out there
17 I was in transition to the
18 landings am I going to be able
19 to do it
20 2045:00 GC November 728 Romeo roger and I
21 should be able to work that
22 out for you just -- are you
23 ready to taxi now
24 2045:07 N728RH I'd have to start off and then
25 I'll call you but I just

1 wanted -- I want to make sure
2 I could go to the landing so
3 I'll call you when I start up
4 in a few minutes
5 2045:13 GC (inaudible) tower roger let me
6 know when you're ready to taxi

7 WHEREUPON, at 2145:13, the transcription
8 ended.

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PIE/ATCT 0024

CERTIFICATION

I, Michael Lawrence, Notary Public in and for the County of Guilford, State of North Carolina at Large, do hereby certify:

That the hearing was taken before me and recorded by Stenomask, thereafter reduced to typewriting under my direct supervision, and the foregoing consecutively numbered pages are a complete and accurate record of all the testimony.

That the undersigned is not of kin, nor in anywise associated with any of the parties to said cause of action, nor their counsel, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this

the 4th day of November, 2015.

CP REPORTING, LLC

Notary No.: 201315500163

20006 North Cove Road, Suite 200

Cornelius, NC 28031

Exhibit “2”



July 23, 2015

Jason Kinzer
[REDACTED]
[REDACTED]
[REDACTED] FL 3 [REDACTED]

Dear Captain Kinzer,

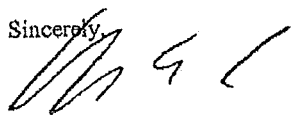
This letter is to notify you that we have concluded our investigation of your conduct as Captain of Allegiant Flight 864 on June 8, 2015.

As an Allegiant Captain, you are considered the "on-scene commander" and should always demonstrate professionalism, maturity and concern for our customers and your coworkers during their daily work assignments. You do this by operating each aircraft safely, smoothly and efficiently and striving to preserve the Company's assets, aircraft, ground equipment, fuel and the personal time of our employees and customers.

You failed to exhibit these behaviors during Flight 864. You ordered an evacuation that was entirely unwarranted and, as a result, your conduct and decision-making on June 8, compromised the safety of your crew and your passengers and led directly to the injuries. Furthermore, during a review of the event and in subsequent conversations you have repeatedly insisted that you made a good decision to evacuate the aircraft and, if faced with a similar situation, you would follow the same course of action.

It is for these reasons that your employment with Allegiant is terminated effective immediately.

Sincerely,


Mark Grock
System Chief Pilot
Allegiant Air

cc. Greg Baden, VP Flight Operations



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EXHIBIT 2

EXHIBIT 2

DECLARATION OF LAURA OVERTON

Laura Overton declares as follows under penalty of perjury.

1. I am over the age of 18 and competent to attest to the facts stated in this Declaration. I make this Declaration in support of Defendants' Notice of Removal filed in the action entitled *Jason Kinzer v. Allegiant Air, LLC, et al.* I am familiar with the facts and circumstances described herein. If called on to do so, I could and would testify as to their truth.

2. I am General Counsel and Vice President of Legal Affairs to Allegiant Travel Company. In my capacity as General Counsel I have become familiar with facts and circumstances relevant to Plaintiff Jason Kinzer's ("Plaintiff") Complaint.

3. At the time Plaintiff was separated from employment with Allegiant Air, LLC, he received a yearly salary of \$120,000.00. Prior to Plaintiff's service of the Summons and Complaint on Defendants, Plaintiff's representative contacted me and demanded \$3,000,000.00 to resolve this dispute.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Executed: December 3, 2015.

By: 
Laura Overton